

REMARKS

Claims 1-29 are pending in the present application. No claims are currently amended, cancelled, or added.

The application currently stands restricted to one of the following species under 35 U.S.C. §121:

Species I: Figures 1-7

Species II: Figure 8

Species III: Figures 9-10

Species IV: Figures 11-12

Species V: Figure 13

Species VI: Figures 14-15

Species VII: Figures 16-17

Species VIII: Figures 18-19

In response to this restriction requirement, Applicants elect Species I, i.e., Figures 1-7, for prosecution on the merits. Claims 1, 2, 4-8, 10-13, 22, and 28 encompass Species I.

The Applicants respectfully submit that at least claims 1 and 2 are generic. As noted by the Examiner, upon the allowance of a generic independent claim, Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of the allowed generic claim.

As required by the Examiner, an English translation of the Opposition filed in the EPO on February 18, 2008 by BEHR is submitted herewith. The Applicants note that the first 12 pages are translated and the remaining untranslated pages are merely copies of the cited references, the Opposition tax payment, the list of cited references, and the detailed main claim.

Finally, the Examiner states on page 3 of the Office Action dated October 16, 2009 that “it appears that claim 1 is not allowable for the reasons stated in the 31 page opposition filed in the EPO on February 18, 2008.” The Applicants respectfully note that claim 1 of the present U.S. application is different than any independent claim of the opposed European patent (EP1601543). In any event, the Applicants respectfully note that the Applicants

responded to the opposition without amending the claims and the EPO has not yet issued a preliminary opinion about the parties' position.

Although no fees are believed due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to our Deposit Account No. 08-2789.

Respectfully submitted,
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Dated: November 5, 2009

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